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By email

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Dear Manager, Communications

### **Re ASIC's power to ban senior officials in the financial sector**

FINSIA welcomes the opportunity to comment on 'Consultation Paper 6: ASIC's power to ban senior officials in the financial sector' that forms part of the ongoing ASIC Enforcement Review.

Founded in 1886, FINSIA is Australasia's peak membership body for professionals in financial services with a heritage of over 130 years and approximately 10,000 supporting members in banking and finance.

FINSIA members agree that there is considerable appetite for change in the financial services industry to restore levels of consumer trust and raise standards of industry conduct. Professionalisation — the process of defining the core body of knowledge and code of conduct shared by individuals working in the industry — is the primary, industry-led means of restoring community trust.

FINSIA will work collaboratively with the industry and key stakeholders to make this change by:

- > partnering with the Chartered Banker Institute (CBI) to implement the Chartered Banker qualification in the Australian market; and
- > supporting the establishment of a Professional Banking Council to define standards of competence, conduct, and culture in the industry.

FINSIA is also working with Chartered Institute for Securities and Investment (CISI) to broaden our professionalisation strategy across the industry.

Evidence from the UK shows the impact of professionalisation on consumer sentiment towards the industry, indicating that it is leading to higher levels of consumer trust. Relevantly, since the rollout of the Chartered Banker designation there has been:

- > A 10% increase in UK adults reporting that they have 'high' or 'some' confidence and trust in the banking industry (2013: 31%, 2017: 41%).
- > An 8% increase in UK adults reporting that they have 'high' or 'some' confidence in individuals who work in the banking industry (2013: 49%, 2017: 57%).

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It is noted in the consultation paper that it is important that ASIC has the power to remove individuals where their conduct is not in the interests of consumers. The principle that individuals should be held accountable for their conduct is one that FINSIA supports as it is part and parcel of professionalisation — that industry participants have demonstrated capability to perform a role in the financial services industry.

In preparing this submission, FINSIA consulted with senior members from across the industry and found broad support for the two preliminary positions detailed in the consultation paper.

Overall, FINSIA found that the preliminary positions outlined in the consultation paper recognise the significant role that can be played by managers who themselves do not provide a financial service by outlining proposals to address the limitations of ASIC's current banning powers.

An area of concern to FINSIA members is so-called 'phoenixing activity' — that individuals subject to ASIC's existing banning powers can resurface in managerial or advisory roles in other parts of the industry.

Empowering ASIC with the enforcement tools to address phoenixing will remedy limitations in ASIC's existing powers that have been acknowledged both by the Financial System Inquiry (2014) and the Senate inquiry into the performance of ASIC.

As a professional institute FINSIA sees that it has a role to play to assist in the implementation of the proposed reforms. To that end, FINSIA welcomes guidance on a working process to refer behaviour of concern to ASIC, and support for professional sanctions via the institute. FINSIA is willing to explore with the regulator the role that it can play in any review and appeals process that forms part of the proposals.

Comments directed to the questions raised in the consultation paper are given below.

### **Question one**

While there is support for some breadth in the power to ban individuals, FINSIA members seek clarification about the application of enhanced ASIC banning powers, and what duration is contemplated for typical banning orders. Further, in what circumstances would it be appropriate to permanently ban an individual from performing any function in a financial services business?

If the power is to extend so far as potentially lock an individual out of the sector permanently, which is one of Australia's largest employment sectors, it is crucial that a robust appeals process and the principle of procedural fairness applies.

Another question that was raised by FINSIA members is to what depth of seniority the provisions will apply, and how the regulator might respond to cases where there is duress — i.e. individuals acting under order from more senior managers.

It is hoped that these questions can be addressed in regulatory guidance from ASIC.

### Questions three and four

FINSIA members that contributed to this submission agreed, for the reasons outlined in the consultation paper, that the 'good fame and character' test in Corporations Act s 920A is replaced by a 'fit and proper person' test.

For the sake of simplicity, and making the legislation easier to work with, there likewise was support for using the same definitions of officer and senior manager in the ASIC powers. These terms, as defined in the Corporations Act, cover the influencing power of the individual (as direct decision-makers or shadow officers), and their capacity to affect an institution's financial standing.

### Question five

As stated above, phoenixing activity is of concern to FINSIA members. Regardless of how often it occurs, it is deeply eroding of community trust, not just in the financial services industry, but also of the regulator's capacity to address wrongdoing.

FINSIA members would be interested to see research that measures the impact of the proposed measures on consumer trust in the industry and its professionals.

There was general support for the proposals regarding phoenixing activity, but again further detail is required on the duration of banning orders. There was some support, for example, for capping banning periods in line with the director disqualification periods in Corporations Act s 206F.

FINSIA looks forward to the next stages of the ASIC Enforcement Review, and further policy development in this area. Please refer any enquiries to Caroline Falshaw A Fin, Head of Industry Affairs and Policy: [c.falshaw@finsia.com](mailto:c.falshaw@finsia.com)

With kind regards,



Chris Whitehead F Fin

**CEO and Managing Director**